

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. No. 13505-C of 2012 and
RSA No. 4844 of 2012 (O&M)*

Date of decision: 03.11.2015

Kuldeep Bhargava

....APPELLANT

VERSUS

Mahesh Kumar and another

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. C.B.Goel, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon dated 31.01.2012, by which suit for pre-emption on the basis that the appellant-plaintiff was the tenant has been dismissed, against which the appeal preferred by him has also been dismissed on 15.09.2012 by the Additional District Judge, Gurgaon.

2. It is the contention of the learned counsel for the appellant that although the revenue records i.e. Jamabandis for the years 1989-90 to 2004-05, Ex. P1 to Ex. P4 indicate the column with regard to the rent is blank but the presumption attached with the revenue records of its correctness is also rebuttable and this onus has been discharged by the appellant-plaintiff in the light of the receipts Ex. PW4/A to Ex. PW4/D, which has been proved by

PW4 Ram Nath where it is mentioned that the amount has been received by them as *Ughai*, which means rent. Therefore, the findings recorded by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. A perusal of the impugned judgments passed by the Courts below would show that as per the Jamabandis Ex. P1 to Ex. P4, the possession has been shown as 'Hissedar' i.e. co-sharer. The column No. 9 which is of rent is blank. The presumption, therefore, with regard to the assertion of the appellant that he was a tenant of the original owner who was a co-sharer is against him. However, on the basis of the receipts Ex. PW4/A to Ex. PW4/D, it has been asserted that this presumption about the correctness of the revenue records stands rebutted. The said receipts have been proved by one Sh. Ram Nath PW4. He has categorically stated in his cross-examination that the appellant-plaintiff never cultivated the land and used to get the work done from the labourers of their land as representatives nor was he their tenant. In the light of this, it cannot be said that the receipts, on which reliance has been placed to assert himself to be the tenant by the appellant, can be accepted. The word "*Ughai*", which has been used in the receipts cannot be said to be or treated as an amount paid by a tenant to the landlord. The findings, thus, recorded by the Courts below with regard to the fact that the appellant-plaintiff has not been able to prove that he was the tenant of the original owner are correct and do not call for any interference.

5. There being concurrent findings recorded by the Courts below

on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 13505-C of 2012

In view of the dismissal of the main appeal, no orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 03, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**